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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,959

02/25/2004

William Toreki

QMT1.1-CIP2-US

4101

3775 7590 03/10/2010
ELMAN TECHNOLOGY LAW, P.C.
P. O. BOX 209
SWARTHMORE, PA 19081

EXAMINER

ROGERS, JAMES WILLIAM

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

03/10/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/786,959</p>	<p>Applicant(s) TOREKI ET AL.</p>	
	<p>Examiner JAMES W. ROGERS</p>	<p>Art Unit 1618</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 60,61,67,68,71 and 72.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

Continuation of 5. Applicant's reply has overcome the following rejection(s): Claim 61 is rejected under 35 U.S.C. 102(b) as being anticipated by Schafer et al. (US 4,617,186).

Continuation of 11. does NOT place the application in condition for allowance because: Applicants assert that Somasundaran does not teach that the carrier particles are bound to the surface substrate and while the active is bound to the target surface. Also applicants assert the reference does not teach the three required components of a material comprising a substrate, a polyionic polymer non-leachable bound to the substrate and an anionic active.

The examiner disagrees. The examiner considers the particle itself as meeting the substrate, the particle further contains charged polymers at the surface of the particle such as polyquats, meeting the claimed polyionic polymer. While only the active is bound to the target surface this only shows that the polyionic particles are non-leachable bound to the particles.

Applicants assert that Batich and Ward are nonanalogous art since Ward's polymers are leachably bound to the substrate since they could be washed off after use.

The relevance of this assertion is also unclear. As noted in previous office actions Ward was used as a secondary reference for its disclosure that it was already known in the art that anionic antimicrobial compounds could be associated to cationic polymers. Since the primary reference Batich describes cationic polymers which applicants purport are non-leachable and Ward teaches that cationic polymers were well known to be capable of releasing anionic drugs, applicant's claimed method of treatment comprising applying a cationic polymer with an ionically associated with an antimicrobial could have been obvious. The secondary reference Ward was only used for the description within that cationic polymers were well known at the time of applicants claimed invention to be capable of releasing anionic drugs and was not used for its teaching of specific cationic polymers which is described by the primary reference Batich. As detailed in the previous action dated 03/04/2009 and incorporated herein applicants assertion that the polymer is bound to a substrate material does not preclude the Ward reference from reading on their claims.

Applicants assert that the secondary reference Schoenfeldt teaches away from the use of quaternary ammoniums polymers as cationic groups.

Schoenfeldt as disclosed previously was used as a secondary reference for its disclosure that cationic polymer compositions were well known to contain MMPI and the reference does not have to recite all of applicants claimed features on its own merit. Schoenfeldt clearly recites that the polyionic polymer contains at least one cationic group which includes amines, a cationic amine is an ammonium ion (which includes protonated substituted amines), and these polymers can incorporate the claimed ilomastat active ingredient. Disclosing cationic amines hardly teaches away from quaternary ammonium ions since they are similar functional groups, differing only in the number of substituted alkyl groups on the amine nitrogen. Thus the examiner concludes that since the polymers of Schoenfeldt and Batich are at least related to ammonium containing polymers, one of ordinary skill in the art would have a reasonable expectation of success in combining the references to make a quaternary ammonium polymer as described in Batich while containing an MMPI.